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CHARLES ELMORE

Supreme Court of the United States,

OCTOBER TERM, 1931.

No. 171.

FIRST NATIONAL BANK OF BOSTON,
Executor of the Estate of Edward H. Haskell, Deceased,
Appellant,

vs.

STATE OF MAINE,
by Clement F. Robinson, Attorney-General,
Appellee.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE.

STATEMENT OF APPELLANT AS TO JURISDICTION ON APPEAL, AS REQUIRED BY RULE NO. 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES EFFECTIVE JULY 1, 1928.

CHARLES L. HUTCHINSON,
Attorney for Appellant,
465 Congress Street,
Portland, Maine.

LEONARD A. PIERCE,
HERBERT J. CONNELL,
FRANKLIN FISHER,
Of Counsel.

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No. 171.

STATEMENT OF APPELLANT AS TO JURISDICTION ON APPEAL.

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully represents:

A.

Statutory Provisions Sustaining Jurisdiction.

This appeal is taken under Sections 861(a) and 861(b) of Title 28 of the United States Code as amended April 26, 1928, and under Rule 46 of the Rules of this Court effective July 1, 1928. Under the old practice a writ of error would have been issued under Section 237 of the Judicial Code as amended, by act of February 13, 1925 (c. 229, sec. 1, 43 Stat. 937), being Section 344, Title 28, of the United States Code,

and particularly under Section 237(a) of the Judicial Code as amended providing in part as follows:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. * * * * *"

B.

Date of Final Judgment and Date of Application for Appeal.

The final judgment of the Supreme Judicial Court of the State of Maine sitting as a Law Court was made and entered on the 16th day of March, 1931. (R. 25).*

The application for appeal was presented and order allowing appeal signed on the 29th day of May, 1931. (R. 30).

C.

Nature of Case and Rulings Below.

1. Facts.

Edward H. Haskell died testate and domiciled in Massachusetts. The largest part of his property consisted of stock in the Great Northern Paper Company, a corporation organized in Maine and having most of its property in Maine. (R. 7).

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* All references to the Record are to the pages of the certified, unprinted Record prepared by the Clerk of Courts for the County of Cumberland, State of Maine, and on file with the Clerk of this Court. The Record has not yet been printed.

The Commonwealth of Massachusetts legally assessed an inheritance tax which was paid of $32,190.53, on legacies and distributive shares made up in greater part of the proceeds of said stock in the Great Northern Paper Co. Ancillary administration of the estate was taken out in Androscoggin County, Maine. (R. 7). The Probate Court of Androscoggin County, Maine, also assessed an inheritance tax of $30,139.88 on said stock (R. 9), and the action in the case at bar was brought for the collection thereof. (R. 10).

The appellant pleaded the general issue (R. 10) and a brief statement in defense (R. 11) that the assessment of said inheritance tax was beyond the power of the State of Maine because the stock in the Great Northern Paper Company did not pass by will or descent from Edward H. Haskell by virtue of the laws of the State of Maine and that Maine was without jurisdiction to assess said tax and that said assessment was an attempt to tax something not within the jurisdiction of the State contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

Another statement of defense contended (R. 11) that as an inheritance tax was paid on said stock to the Commonwealth of Massachusetts, the domicile of the owner, the assessment of an inheritance tax by the State of Maine on the transfer of the same stock constituted double taxation contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

Another statement of defense asserted (R. 11) that the benefit or privilege conferred by the State of Maine in assisting in the transfer of the stock was so small compared with the tax claimed that it clearly resulted in such flagrant and palpable inequality between the burden imposed and the benefit received as to amount to the arbitrary taking of property without compensation,—to spoliation under the

guise of exerting the taxing power contrary to the provisions of the Fourteenth Amendment.

An agreed statement of facts reciting in detail the foregoing summary was entered into by both parties (R. 7 to 12) and under statutory authority therefor the case was referred for final decision to the Supreme Judicial Court of the State of Maine sitting as a Law Court. (R. 12).

2. The Statute.

The Statute under which the tax in question was assessed was *Section 1 of Chapter 69, Revised Statutes of Maine (1916),* as amended and in force at the death of the testator, the pertinent language being as follows: (R. 19)

> "All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the intestate laws of this state, * * * * shall be subject to an inheritance tax for the use of the state as hereinafter provided. * * * "

In connection with the foregoing statute, the Maine court also considered the following:

> *Section 36, Chapter 51, Revised Statutes of Maine (1916),* as amended by *Chapter 49, Public Laws of 1919,* which relates to the transfer of certificates of stock by endorsement and delivery and the issuance by the corporation of new certificates to those entitled to them by transfer or otherwise and prescribes by whom the certificate shall be signed. (R. 22).
>
> *Section 37, Chapter 51, Revised Statutes of Maine (1916),* which provides that no transfer shall affect the right of the corporation to pay dividends or to treat the record holder as holder in fact until the transfer is recorded on the books of the corporation or a new cer-

tificate issued to the person to whom it has been so transferred. (R. 22).

Section 25, Chapter 69, Revised Statutes of Maine (1916), which provides that if a foreign executor assigns or transfers stock in a corporation organized under the laws of Maine, owned by a deceased non-resident and liable to a tax under the provisions of the chapter, the tax shall be paid to the attorney general at the time of the assignment or transfer, and if not paid when due the executor shall be personally liable therefor until paid. It also imposes a liability for the tax on a bank located in the state or corporation organized under the laws of the state which shall record a transfer of or issue new certificate for such stock before all taxes imposed have been paid. (R. 22).

Section 26, Chapter 69, provides that no person or corporation shall deliver or transfer any securities or assets belonging to the estate of a non-resident decedent to anyone unless authority to receive the same shall have been given by a Probate Court of Maine on satisfactory evidence that all inheritance taxes have been paid or guaranteed. For the violation of this section is imposed a liability for the tax in an action of debt brought by the attorney general. (R. 23).

3. RULINGS OF THE SUPREME JUDICIAL COURT OF MAINE.

The Supreme Judicial Court discussed only the first part of the brief statement in defense and ruled that as the Great Northern Paper Company was a Maine corporation the State of Maine had jurisdiction to assess the tax in question.

The Court did not discuss the jurisdictional point as to whether or not the stock in the Great Northern Paper Company owned by Mr. Haskell passed under his will by virtue of the laws of Maine.

After calling attention to the various statutes referred to *supra* regulating the transfer of stock in Maine corporations the Court said: (R. 23)

> "The foregoing statutory provisions state the law relating to transfers of stock generally and to stock held by non-resident decedents, and indicate the necessity of acts of transfer, payment and delivery to be done and performed under the authority of the Maine law. They indicate and constitute a privilege accorded by the State of Maine and without that privilege there can be no complete devolution of title to the shares of stock involved in this case and the laws of Maine must of necessity be invoked."

In this connection while mentioning that the laws of Maine had to be complied with in order to *complete* a transfer of stock in a Maine corporation the Court did not discuss the question of whether the *transfer* of the stock in question under the will of Edward H. Haskell was a privilege granted by the State of Maine. Nor did the opinion refer to the point raised by the defense that the privilege granted by the State of Maine in this instance in assisting in the transfer of the stock was so small in comparison with the tax demanded that the tax amounted to spoliation under the guise of the taxing power contrary to the provisions of the Fourteenth Amendment.

The Court did not expressly pass upon the contention of the defense that as an inheritance tax of $32,190.53 had already been paid to the Commonwealth of Massachusetts for the transfer of the stock under the will of Edward H. Haskell, for the State of Maine also to assess an inheritance tax on the transfer of the same stock amounted to double taxation contrary to the provisions of the Fourteenth Amendment.

The opinion concludes as follows: (R. 24)

> "Believing that it is in accord with the overwhelming weight of authority indicated in the cases herein cited, we hold in the instant case that the shares of stock in the Great Northern Paper Company, a corporation

organized and existing by virtue of the laws of this State imposing the tax, are within its jurisdiction and there subject to an inheritance tax even though the owner was a non-resident decedent, regardless of whether the certificates of stock were at the time of the death in the state of the domicile or in the taxing state, and that such a tax does not violate any provision of the Fourteenth Amendment."

In accordance with the Statutes of Maine a rescript prepared by the Court was filed in the office of the Clerk of Courts for the County of Cumberland, which is as follows: (R. 25)

"RESCRIPT FARRINGTON, J.

On report on agreed statement of facts.

Shares of stock in a corporation organized and existing by virtue of the laws of the State of Maine are within its jurisdiction and there subject to an inheritance tax, even though the owner was a non-resident decedent, regardless of whether the certificates of stock were at the time of the death in the state of the domicile or in this state, and such a tax does not violate any provision of the Fourteenth Amendment of the Constitution of the United States.

Judgment for the State of Maine for $30,139.88, with interest from February 19, 1930.

Received March 16th, 1931."

D.

Cases Sustaining the Jurisdiction.

Thus the Federal questions presented by the assignments of error in the appeal now before this Court, were presented to and passed upon by the Supreme Judicial Court of the State of Maine. The decision of the Supreme Judicial Court

of Maine and the judgment entered thereon were in favor of the validity of *Section 1 of Chapter 69, Revised Statutes of Maine (1916)*, as construed and applied by said Court, and denied the claims of the appellant that said statute so construed and applied was repugnant to the Constitution of the United States.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Farmers Loan and Trust Co. v. *Minnesota*, 280 U. S. 204.
Baldwin v. *Missouri*, 281 U. S. 586.
Beidler v. *South Carolina Tax Commission*, 282 U. S. 1.

In each of the cases cited, this Court has assumed jurisdiction on appeal to determine whether a State statute, as construed and applied by the highest Court of the State, is valid under the Constitution and Laws of the United States. These cases are therefore authorities sustaining the jurisdiction of this Court.

We respectfully submit that this Court has jurisdiction of this appeal.

Respectfully submitted,

CHARLES L. HUTCHINSON,
Attorney for Appellant,
465 Congress St.,
Portland, Maine.

LEONARD A. PIERCE,
HERBERT J. CONNELL,
FRANKLIN FISHER,
Of Counsel.